



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2013-0132; FRL- 9792-3]**

**Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland and Virginia; Attainment Demonstration for the 1997 8-Hour Ozone National Ambient Air Quality Standard for the Washington, DC-MD-VA Moderate Nonattainment Area**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve the attainment demonstration portion of the attainment plan submitted by the District of Columbia, the State of Maryland and the Commonwealth of Virginia as revisions to each of their State Implementation Plans (SIPs). These revisions demonstrate attainment of the 1997 8-hour ozone national ambient air quality standard (1997 ozone NAAQS) for the Washington, DC-MD-VA, moderate nonattainment area (the Washington Area) by the applicable attainment date of June 2010. EPA has determined that each of the three SIP revisions meet the applicable requirements of the Clean Air Act (CAA). This action is being taken in accordance with the CAA.

**DATES:** Written comments must be received on or before [insert date 30 days from date of publication].

**ADDRESSES:** Submit your comments, identified by Docket ID Number **EPA-R03-OAR-2013-0132** by one of the following methods:

A. [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions for submitting comments.

B. E-mail: [fernandez.cristinia@epa.gov](mailto:fernandez.cristinia@epa.gov).

C. Mail: **EPA-R03-OAR-2013-0132**, Cristina Fernandez, Associate Director, Office of Air Planning Program, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. **EPA-R03-OAR-2013-0132**. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification,

EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

***Docket:*** All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index.

Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the States' submittals are available at the District of Columbia, Department of the Environment, Air Quality Division, 1200 1st Street, NE 5th floor, Washington, D.C. 20002; Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

**FOR FURTHER INFORMATION CONTACT:** Christopher Cripps, (215) 814-2179, or by e-mail at [cripps.christopher@epa.gov](mailto:cripps.christopher@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

The following is provided to aid in locating information in this preamble.

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### **I. Summary of Proposed Action**

EPA is proposing to approve the attainment demonstration, failure to attain contingency measures elements and the associated motor vehicle emission budgets (MVEBs) of the SIP revisions submitted by the District of Columbia, the State of Maryland and the Commonwealth of Virginia (hereafter “the 3 States”<sup>1</sup>) to EPA on June 12, 2007, June 4, 2007 and June 12, 2007, respectively (hereafter the “June 2007 SIP revisions”). The June 2007 SIP revisions included, among other things, the attainment plan and failure-to-attain contingency measures elements for the 1997 ozone NAAQS in the Washington Area. With the June 2007 SIP revisions, the 3 States submitted an attainment demonstration for the Washington Area and its associated proposed MVEBs used for transportation conformity purposes in the Washington Area. With the June

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<sup>1</sup> Section 302(d) confers upon the District of Columbia the same rights and responsibilities for air pollution control as the 50 states.

2007 SIP revisions, the 3 States also submitted a 2002 base year emissions inventory, an analysis of reasonably available control measures/reasonably available control technology (RACM/RACT), the 2008 reasonable further progress (RFP) plan and its associated MVEBs for 2008, and contingency measures. The RFP plan with its MVEBs, the RACM/RACT analysis, the 2002 base year emissions inventory, and contingency measures for any failure to make RFP in the June 2007 SIP revisions were approved by EPA on September 20, 2011 (76 FR 58116) (the “September 20, 2011 final rule”). Therefore, in this action, EPA is only proposing to approve what remains from the June 2007 SIP revisions including the attainment demonstration, failure to attain contingency measures, and the associated MVEBs for the 1997 ozone NAAQS for the Washington Area.

EPA has determined that the 3 States’ attainment demonstration meets the applicable requirements of the CAA because it demonstrates attainment by the applicable attainment date of June 15, 2010. EPA’s analysis and findings are discussed in this proposed rulemaking. In addition, a technical support document (TSD) for this proposal entitled “Technical Support Document for Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland and Virginia; Attainment Demonstration for the 1997 8-Hour Ozone National Ambient Air Quality Standard for the Washington, DC-MD-VA Moderate Nonattainment Area” (referred to hereafter as the “Attainment TSD”) is available on line at [www.regulations.gov](http://www.regulations.gov), Docket No. **EPA-R03-OAR-2013-0132**. The Attainment TSD provides additional explanation on EPA’s analysis supporting this proposed approval of the attainment demonstration.

## **II. Background Information**

### **A. Background on the 1997 Ozone NAAQS and Designation of the Washington Area**

On July 18, 1997 (62 FR 38856), EPA promulgated the 1997 ozone NAAQS which revised the health-based NAAQS for ozone by setting the NAAQS at 0.08 parts per million (ppm) averaged over an 8-hour time frame. EPA set the 1997 ozone NAAQS based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 1997 ozone NAAQS would be more protective of human health, especially for children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

On April 30, 2004 (69 FR 23951), EPA finalized the attainment/nonattainment designations for areas across the country with respect to the 1997 ozone NAAQS. These actions became effective on June 15, 2004. Among those nonattainment areas was the Washington Area. The Washington Area is comprised of: the entire District of Columbia (the District); a portion of Maryland (Calvert, Charles, Frederick, Montgomery, and Prince George's Counties); and a portion of Virginia (Alexandria City, Arlington County, Fairfax City, Fairfax County, Falls Church City, Manassas and Manassas Park Cities, and Prince William County).

In addition, on April 30, 2004 (69 FR 23951), EPA promulgated its Phase 1 Implementation Rule which provided how areas designated nonattainment for the 1997 ozone NAAQS would be

classified using the design value for each nonattainment area. Based upon its design value for the three-year period 2001-2003, the Washington Area was classified as a moderate ozone nonattainment area under the 1997 ozone NAAQS. *See* 40 CFR 81.309, 81.321, and 81.347.

Moderate areas are required to attain the 1997 ozone NAAQS by no later than six years after designation. Therefore, the Washington Area was to attain by no later than June 15, 2010. *See* 40 CFR 51.903 and 69 FR 23951, April 30, 2004.

#### **B. Actions Regarding Determination of Attainment of the 1997 Ozone NAAQS by the Washington Area**

On February 28, 2012 (77 FR 11739), EPA published two determinations regarding the 1997 ozone NAAQS for the Washington Area. First, EPA made a clean data determination that the Washington Area had attained the 1997 ozone NAAQS.

This determination was based upon complete, quality assured, and certified ambient air monitoring data that showed the Washington Area had monitored attainment of the 1997 ozone NAAQS for the 2008 – 2010 monitoring period. Ambient air monitoring data for the 2009 – 2011 monitoring period is consistent with continued attainment. Second, pursuant to section 181(b)(2)(A) of the CAA, EPA made a determination of attainment that the Washington Area had attained the 1997 ozone NAAQS by its attainment date of June 15, 2010 as required by section 181 of the CAA as interpreted by the implementation rule (40 CFR 51.903) for the 1997 ozone NAAQS.

Even though the attainment date for the Washington Area has passed and the area has in fact attained the 1997 ozone NAAQS by that date, EPA believes that approval of the attainment demonstration and contingency measures plan in the June 2007 SIP revisions is important because such approval strengthens the ozone SIP of each of the 3 States by reserving reductions from various measures for air quality purposes and by approving lower MVEBs into the SIP than those associated with the 2008 RFP plan.

### **C. Adequacy of the 2009 and 2010 MVEBs**

EPA conducted the process to determine the adequacy of the MVEBs for the entire Washington Area associated with the attainment demonstration portions of the June 2007 SIP revisions for the Washington Area. On September 27, 2012, EPA posted a notice on EPA's website at <http://www.epa.gov/otaq/stateresources/transconf/currships.htm> for the purpose of opening a 30-day public comment period on the adequacy of the MVEBs for the Washington Area in the June 2007 SIP revisions' attainment demonstration for the Washington Area. That notice informed the public of the availability of the June 2007 SIP revisions. EPA's public comment period closed on October 29, 2012, and no comments were received. EPA published a notice of adequacy in the Federal Register on February 7, 2013 (78 FR 9044) which announced EPA had determined that the MVEBs were adequate. EPA's determination that the 2009 and 2010 MVEBs in the June 2007 SIP revisions has the effect of making the 2009 volatile organic compounds (VOC) and 2010 nitrogen oxides (NOx) MVEBs the MVEBs applicable for transportation conformity purposes as of February 22, 2013. This proposed action, if issued as a

final rule, would approve these budgets into the ozone SIP of each of the 3 States.

### **III. CAA Requirements for Moderate 8-Hour Ozone Nonattainment Areas**

Pursuant to the Phase 1 Implementation Rule, the Washington Area was classified under subpart 2 as a moderate nonattainment area. On November 29, 2005 (70 FR 71612), EPA promulgated the second phase of the implementation rule (Phase 2 Implementation Rule) for the 1997 ozone NAAQS. The Phase 2 Implementation Rule set forth the submission deadlines and the remaining substantive requirements for the attainment demonstration, contingency measures and RFP requirements of section 172(c) as supplemented by section 182(b) of the CAA.

The Phase 2 Implementation Rule addressed the control obligations that apply to areas classified under subpart 2. Among other things, the Phase 1 and 2 Implementation Rules outline the required SIP elements and deadlines for those various requirements in areas designated as moderate nonattainment.

The requirements regarding a demonstration of attainment of the 1997 ozone NAAQS are:

1. A demonstration that the SIP contains enough reductions in VOC emissions and NO<sub>x</sub> emissions to attain the 1997 ozone NAAQS as expeditiously as practicable but no later than June 15, 2010. *See* section 172(c)(1) as amended by section 182(b)(1) as codified in 40 CFR 51.908. However, because compliance with the 1997 ozone NAAQS must be determined using three years of complete, quality-assured air quality monitoring data, any determination of attainment by June 15, 2010 would have to be made upon the most recent three years of air quality

monitoring data available which would be 2007, 2008 and 2009. For this reason, the Phase 1 Implementation Rule (40 CFR 51.908) required that the emission reduction measures needed to be implemented no later than the beginning of the 2009 ozone season and that the MVEBs associated with the attainment demonstration be for 2009. As a result, the modeling demonstration needed to use projected 2009 emissions inventories reflecting the control strategies and predicted 2009 design values;

2. A demonstration that the SIP provides for the implementation of all RACM (including at a minimum RACT on existing sources). Section 172(c)(1) includes two elements: (a) Under section 172(c)(1) RACM/RACT, a state must “consider all potentially available measures to determine whether they [a]re reasonably available for implementation in the area, and whether they would advance the [area's] attainment date.” *See* 66 FR 585, 608 (January 3, 2001); and (b) under CAA section 182(b)(2), the CAA sets a requirement for RACT not related to expeditious attainment but requires a State adopt rules for any category of VOC sources for which EPA has issued a control technique guideline (CTG) and for any other major stationary sources of VOC emissions in the area. Section 182(f) extends the requirement for RACT under section 182(b)(2)(C) to any major stationary sources of NO<sub>x</sub> emissions in the area.

3. A demonstration that the SIP provides a minimum RFP towards attainment by reducing baseline emissions of VOC and/or NO<sub>x</sub> by 15 percent before December 31, 2008 and contains adequate MVEBs for 2008;

4. A 2002 baseline inventory from which the 15 percent reduction in baseline emissions is to be determined; and

5. Specific measures to be undertaken if the area fails to: (a) attain the 1997 ozone NAAQS by

June 15, 2010, or (b) fails to achieve RFP. *See* section 179(c)(9).

6. Adequate MVEBs:<sup>2</sup> In the case of moderate nonattainment areas under the 1997 ozone NAAQS, RFP plans and attainment demonstrations must contain adequate MVEBs for 2008 and 2009, respectively. In the June 2007 SIP revisions, the 3 States also included a 2010 MVEB for NO<sub>x</sub> as part of the contingency plan to address a failure to attain.

#### **IV. Description of the States' SIP Submittals**

In the June 2007 SIP revisions, the 3 States submitted a comprehensive attainment plan for the 1997 ozone NAAQS. The June 2007 SIP revisions included an attainment demonstration with 2009 MVEBs, the RFP plan with 2008 MVEBs, a RACM/RACT analysis, the 2002 base year emissions inventory, and contingency measures for any failure to make RFP. This rulemaking action only addresses the portions of the June 2007 SIP revisions not previously approved by EPA including the attainment demonstration, contingency measures for failure to attain, and associated 2009 and 2010 MVEBs. By a separate and concurrent process, EPA had already determined that the 2009 and 2010 MVEBs associated with the ozone attainment demonstration and contingency measures portions in the June 2007 SIP revisions are adequate. In this proposed rule, EPA proposes to approve those 2009 and 2010 MVEBs into the SIPs of each of the 3 States. As stated in section I of this document, the other elements – including the RFP plan with MVEBs, a RACM/RACT analysis, the 2002 base year emissions inventory, and contingency measures for any failure to make RFP – in the June 2007 SIP revisions were approved by the September 20, 2011 final rule.

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<sup>2</sup> *See* 64 FR 70460 at 70465, December 16, 1999 and 70 FR 6796 at 6799, February 9, 2005, citing CAA section 176(c)(2)(A).

## **V. EPA's Review of the States' Modeled Attainment Demonstration and Weight of Evidence Analysis for the Washington Area**

Section 110(a)(2)(K) of the CAA requires states to prepare air quality modeling to show how they will meet ambient air quality standards. EPA determined that areas classified as moderate or above must use photochemical grid modeling or any other analytical method determined by the Administrator to be at least as effective to demonstrate attainment of the ozone health-based standard by the required attainment date. *See* 40 CFR 51.908. On April 30, 2004 (69 FR 23951 and 40 CFR 51.903), EPA specified how areas would be classified with regard to the 8-hour ozone standard set by EPA in 1997. On April 30, 2004 (69 FR 23858), EPA followed these procedures and classified the Washington Area as moderate, and the nonattainment area was required to attain the 1997 ozone NAAQS by June 2010. Because the attainment date was June 2010 for moderate areas, states had to achieve emission reductions by the ozone season of 2009 in order for ozone concentrations to be reduced and show attainment during the last complete ozone season before the 2010 deadline.

### **A. EPA Guidance for Using Models to Determine Attainment**

EPA's photochemical modeling guidance is found at *Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, PM<sub>2.5</sub>, and Regional Haze*, EPA-454/B-07-002, April 2007. The photochemical modeling guidance is divided into two parts. One part describes how to use a photochemical grid model for ozone to assess whether an area will come into attainment of the air quality standard. A second part describes

how the user should perform supplemental analyses, using various analytical methods, to determine if the model over predicts, under predicts, or accurately predicts the air quality improvement projected to occur by the attainment date. The guidance indicates that states should review these supplemental analyses, in combination with the modeling analysis, in a “weight of evidence” assessment to determine whether each area is likely to achieve timely attainment.

A description of how the attainment demonstration from the June 2007 SIP revisions addresses this EPA modeling guidance for a modeled attainment demonstration can be found in the Attainment TSD titled “Technical Support Document for Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland and Virginia; Attainment Demonstration for the 1997 8-Hour Ozone National Ambient Air Quality Standard for the Washington, DC-MD-VA Moderate Nonattainment Area,” available on line at [www.regulations.gov](http://www.regulations.gov), Docket number **EPA-R03-OAR-2013-0132**.

In the June 2007 SIP revisions, the photochemical grid model used projected emissions for 2009, including emission changes due to regulations the 3 States and neighboring states were planning to implement or had already implemented and due to expected growth by the 2009 ozone season. Meteorological conditions from 2002, the same as the base year modeling, were used in the projection modeling for 2009. Using base case meteorology allows the effect of changes in states’ emissions to be determined without being influenced by yearly fluctuations in meteorology and is consistent with EPA guidance.

The attainment test used in the Washington Area modeling demonstration involved the application of model-based relative response factors (RRFs) to base year design values at each monitor to produce projected future year design values for 2009. The projected 2009 design values represent design values that should result from emission controls the 3 States and other states planned to have in place in 2009. As discussed in the Attainment TSD, the 2009 design values should be less than or equal to 84 parts per billion (ppb) at all monitoring stations to meet the attainment test. The SIP modeling predicts that in 2009, the Washington Area will not pass the attainment test because the design values at two monitors are projected to be 1 or 2 ppb over the 84 ppb standard.

In summary, the basic photochemical grid modeling presented in the 3 States' June 2007 SIP revisions meets EPA's guidelines and when used with the methods recommended in EPA's modeling guidance, is acceptable to EPA. However, when EPA's attainment test is applied to the modeling results, two of the seventeen monitors in the Washington Area had 2009 projected ozone design values predicted to exceed the 84 ppb standard with design values of 85 and 86 ppb. Thus, based solely upon consideration of EPA's modeled attainment test, the 3 States have not conclusively demonstrated that the Washington Area will reach attainment of the 1997 ozone NAAQS in the attainment year with the modeled emission reduction strategies committed to by the 3 States and neighboring states. Therefore, a weight of evidence (WOE) analysis was used by the 3 States and reviewed by EPA to demonstrate attainment of the 1997 ozone NAAQS in the Washington Area in accordance with EPA guidance.

## **B. Weight of Evidence Demonstration**

EPA's modeling guidance describes how to use a photochemical grid model and additional analytical methods to complete a WOE analysis to estimate if emissions control strategies will demonstrate attainment of the 1997 ozone NAAQS. This modeling guidance recommends a WOE analysis beyond basic supplemental analyses if any future predicted design values fall within the range of 82 to 87 ppb (inclusive). Only four monitors in the Washington Area had model-predicted 2009 design values within this range. The rest of the monitors in the Washington Area had model-predicted design values of 81 ppb or less. A WOE analysis is a supporting analysis that helps to determine if the results of the photochemical modeling system are correctly (or not correctly) predicting future air quality. The WOE analysis presented in the 3 States' June 2007 SIP revisions describes the analyses performed, databases used, key assumptions and outcomes of each analysis, and why the evidence, viewed as a whole, supports a conclusion that the Washington Area will attain the 1997 ozone NAAQS despite the model prediction that some monitors' future design values exceed the levels of the 1997 ozone NAAQS.

EPA's review of the 3 States' WOE analysis in the Attainment TSD includes the following: (1) a comparison of model-predicted 2009 ozone design values to monitored design values for 2003 - 2011; (2) an analysis of recent ozone trends in the Washington Area; and (3) alternative methods for calculating the predicted 2009 ozone design value using modeling results. Further, in the Attainment TSD, EPA's analysis concurs with the 3 States' analysis of significant

declining trends for the ozone design values, number of exceedances, ratio of exceedance days to days with a maximum ambient temperature over 90 degrees Fahrenheit and spatial extent of exceedances of the 1997 ozone NAAQS in the Washington Area.

As discussed in detail in the Attainment TSD, the 3 States' attainment demonstration also asserted an alternative baseline concentration could be used to demonstrate attainment. However, EPA determined in the Attainment TSD that the modeling would still not pass the basic modeled attainment test even with this alternative baseline value. Likewise, EPA determined in the Attainment TSD that the 3 States' recalculation of 2009 modeled ozone design values with a relative response factor calculated using the alternative methods presented in the 3 States' June 2007 SIP revisions reduced the modeled 2009 ozone design values slightly but not always below 85 ppb. The 3 States presented a range of predicted 2009 design values based upon the modeling in terms of maximum and minimum predicted 2009 design values. All of the minimum values were 82 ppb and lower but three of the maximum values were 85 ppb or above. The 3 States' methodology can yield up to nine separate 2009 predicted design values within the range. For all but one monitor, the average value for the nine separate 2009 predicted design values were below 85 ppb.

As discussed in the Attainment TSD, EPA concurs that the model over predicted 2009 ozone design values relative to the actual monitored 2009 to 2011 design values for most cases and always for those four monitors for which the modeled design values were in the range of 82 to 87 ppb when determined using EPA's preferred method for calculating the baseline design value

and the relative response factor. The Attainment TSD notes that monitored ozone design values for each of the Washington Area monitors continued to decline and that each monitor continued to show attainment in 2010 and 2011.

In conclusion, in the Attainment TSD, EPA determined with the benefit of 2009 monitored design values that the model in the 3 States' June 2007 SIP revisions over predicted 2009 predicted design values when compared to actual monitored design values since 2009. EPA has determined that the 3 States' photochemical grid modeling results predict a 2009 projected design value at most 2 ppb above the 1997 ozone NAAQS for the Washington Area. However, after taking into account WOE arguments regarding model over prediction of the 2009 monitored design values, recent ozone design value trends, and the Washington Area's attainment of the standard by 2010, EPA has determined that the 3 States' June 2007 SIP revisions demonstrate attainment of the ozone standard by the attainment date of June 2010 as discussed in detail in the Attainment TSD.

## **VI. Description of the Control Measures and Emission Reductions Included in the Plan for Attainment and Contingency Measures**

### **A. RFP Measures**

All of the measures which were used to demonstrate RFP in the June 2007 SIP revisions are part of the measures for obtaining the reductions needed for attainment. These are described in the TSD prepared for the approval of the RFP plan.<sup>3</sup> The RFP plan relied solely upon VOC

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<sup>3</sup> Refer to "Technical Support Document — District of Columbia, Maryland, and Virginia; 2002 Base Year Emissions Inventory, Reasonable Further Progress Plan, Contingency Measures, Reasonably Available Control

reductions from these measures. *See* Table 6 in the June 30, 2011 notice of proposed rulemaking (NPR) (73 FR 38334, 38337) for the September 20, 2011 final rule approving the RFP plan.

Some of these measures also provide reductions in NO<sub>x</sub> emissions as well. These include most of the Federal nonroad and on-road mobile sources emissions standards and other on-road mobile sources controls such as enhanced motor vehicle inspection and maintenance (I/M) programs or the transportation control measures. Most of the contingency measure reductions to address any failure to achieve RFP were NO<sub>x</sub> reductions. *See* Section II.E of the June 30, 2011 NPR (73 FR 38334, 38337-38338).

Most of the RFP plan measures also provide additional VOC reductions in the 2009 attainment year over and above those projected for the RFP year of 2008. These include Federal nonroad and on-road mobile sources emissions standards and area source rules such as those covering portable fuel containers, older vehicles and engines.

## **B. Additional Measures beyond the RFP Plan**

The attainment demonstration for the Washington Area relied upon some additional measures beyond those used to demonstrate RFP. Some of the RFP measures also provide reductions in NO<sub>x</sub> emissions in addition to the VOC reductions credited towards the RFP requirement.

These included amending existing state regulations for area source categories to add emission standards for additional categories of consumer products and stricter standards for previously

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Measures, and Transportation Conformity Budgets for the Metropolitan Washington, DC 1997 8-Hour Ozone Moderate Nonattainment Area,” dated May 26, 2011, a copy of which has been included in the docket for this proposed rule.

regulated products such as portable fuel containers. Also, the 3 States adopted regulations for industrial adhesives and sealants. Specifically, the attainment plan also relied upon the following new measures:

1. Regulations controlling VOC emissions from industrial adhesives and sealants in Maryland and Virginia conforming to the emission standards of a “model rule” prepared by the Ozone Transport Commissions (OTC);
2. Stricter standards representing a second “phase” of control by Virginia on VOC emissions from portable fuel containers conforming to those of a “model rule” prepared by the OTC; and
3. Emissions standards for additional classes of consumer products in a second “phase” of VOC control by Virginia on VOC emissions conforming to those of a “model rule” prepared by the OTC.

All of these rules have been fully approved by EPA into the applicable State SIP. *See* 76 FR 64237 (October 18, 2011) and 76 FR 51925 (August 19, 2011) (regarding Maryland adhesives and sealants rule), and 77 FR 3928 (January 26, 2012) and 76 FR 69214 (November 8, 2011) (regarding Virginia’s adhesives and sealants rule, phase 2 portable fuel containers rule, and phase 2 consumer products rule).

Maryland also instituted a second phase of control on consumer products and portable fuel

containers conforming to a “model rule” prepared by the OTC, but Maryland’s rules required compliance before the end of calendar year 2008 and so are not rules beyond those for the RFP plan.<sup>4</sup>

In addition, some of emission reductions in the contingency plan for a failure to achieve adequate RFP by the end of calendar year 2008 provide part of the reductions for the attainment demonstration. These are emission reductions in the Washington Area scheduled to occur after 2008 but during 2009 such as the portable fuel containers rules (additional reductions occurring as a result of rule phases 1 and 2) and reductions from beyond RACT level control of NO<sub>x</sub> sources. Table 1 provides a summary of the attainment plan’s measures and the projected 2009 emission reductions.

<b>Table 1. Control Measures and 2009 Emission Reductions in the Washington Area</b>		
<b>Source Sector</b>	<b>Reductions (tons per day)</b>	
	<b>VOC</b>	<b>NO<sub>x</sub></b>
Point Source Measures	0.00	128.76
Area Sources Measures	36.97	0.00
Nonroad Measures (NONROAD Model)	42.44	14.76
Locomotive Standards	0.06	2.74
On-road Measures (MOBILE Model)	7.17	37.63
Transportation Control Measures	0.18	0.45
Voluntary Bundle	0.19	0.30
Totals	87.01	184.64

<sup>4</sup> The District of Columbia committed to adopting and submitting as a SIP revision regulations conforming to those of the “model rules” prepared by the OTC for these similar categories, but any emission reductions arising from these measures in the District were not applied to the emissions reductions upon which the attainment modeling and contingency measure demonstration relied.

#### **D. Contingency Plan Reductions**

Section 172(c)(9) of the CAA requires that SIPs contain additional contingency measures that will take effect without further action by the state or EPA if an area fails to attain an ambient air quality standard by the applicable attainment date or fails to achieve sufficient RFP.<sup>5</sup> The CAA does not specify how many contingency measures are needed or the magnitude of emissions reductions that must be provided by these measures. However, EPA provided initial guidance interpreting the contingency measure requirements of section 172(c)(9) in the April 16, 1992, General Preamble for Implementation of the Act. *See* 57 FR 13498, 13510 (April 16, 1992). In the April 16, 1992 initial guidance, EPA indicated that states with ozone nonattainment areas classified as moderate and above should include sufficient contingency measures so that, upon implementation of such measures, additional emission reductions of up to 3 percent of the emissions in the adjusted base year inventory (or such lesser percentage that will cure the identified failure) would be achieved in the year following the year in which the failure has been identified. The state must show that the contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions.

EPA allows areas to use as contingency measures one or more Federal or local measures that are in place and provide reductions that are in excess to the attainment demonstration (or RFP plan). *See* 70 FR 71612, 71651 (November 29, 2005). Further, EPA believes that any additional reductions resulting from measures in the attainment strategy occurring after the applicable attainment date are clearly in excess to those needed for attainment. The modeling

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<sup>5</sup> EPA has already approved contingency measures for failure to make RFP as discussed in section IV.B of this document. This proposed rule therefore only applies to approval of contingency measures needed to address the failure to attain by the applicable attainment date “prong” in section 179(c)(9).

demonstration for the Washington Area was based upon projected emissions levels for the year 2009, and therefore reductions occurring after the end of calendar year 2009 would be excess to attainment needs.

The applicable attainment date for the Washington Area was June 15, 2010 based upon an effective date of designation under the 1997 ozone NAAQS of June 15, 2004. *See* 69 FR 28858 (April 30, 2004) and Table 1 in 40 CFR 51.903. The earliest EPA could have made a determination of attainment or failure to achieve attainment for the Washington Area was in June 2010; therefore, under the April 16, 1992 initial guidance, the earliest the “year following the year the failure was indentified” would have been in 2011. Therefore, EPA believes that reductions that occur after 2009 and as early as 2010 and as late as 2011 would qualify for contingency measures to address any failure to attain as satisfying both the excess to attainment and the timing of reductions requirements. Excess reductions from measures already in place meet the requirement that contingency measures be implemented with minimal further action by the state and with no additional rulemaking actions. For more information on contingency measures, see the April 16, 1992 General Preamble (57 FR 13512) and the November 29, 2005 Phase 2 Implementation Rule (70 FR 71612, 71650).

Because the Washington Area’s attainment demonstration relies upon both VOC and NO<sub>x</sub> reductions, acceptable contingency measures can include NO<sub>x</sub> and VOC reductions.<sup>6</sup> For the failure to attain contingency requirement, the 3 States identified specific measures yielding 8.46

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<sup>6</sup> Such a result comports well with section 182(b)(1)(A) which requires a moderate area plan to provide for “reductions in volatile organic compounds and oxides of nitrogen as necessary to attain” the 1997 ozone NAAQS by the applicable attainment date for moderate areas.

tons per day of VOC emissions reductions and 6.05 tons per day of NOx emissions reductions.

These reductions represent a 1.941 percent reduction in VOC emissions and a 1.069 percent reduction in NOx emissions as shown in Table 2 of this document.

<b>Table 2. Calculation of VOC and NOx Reductions for Attainment Contingency</b>			
		<b>(Ozone Season tons per day)</b>	
<b>Item</b>	<b>Description</b>	<b>VOC</b>	<b>NOx</b>
(a)	2002 Base-Year Inventory	448.28	597.22
(b)	Non-creditable Emissions Reduction	12.45	31.61
(c)	Adjusted Base-Year Inventory = Item (a) minus Item (b)	435.83	565.61
(d)	1.941% VOC Reduction Required for Attainment Contingency = (1.941 /100) times Item (c)	8.459	
(e)	1.069% NOx Reduction Required for Attainment Contingency = (1.069/100) times Item (c)		6.046

The approved base year inventory for the Washington Area under the 1997 ozone NAAQS is from Table 2 of the NPR for the September 20, 2011 final rule. *See* 76 FR 38334, 38336 (June 30, 2011). In Table 3, the 3 States identified the following specific Federal and state measures as providing contingency measures.

<b>Table 3. Contingency Measures for Failure to Attain</b>			
		<b>(Ozone Season tons per day)</b>	
<b>Contingency Measure</b>	<b>Source Category Affected</b>	<b>VOC</b>	<b>NOx</b>
Tier 2 Motor Vehicle Emission Standards	On-road mobile	0	1.77
Phase I and Phase II Emissions Standards for Gasoline-Powered Non-Road Utility Engines	Nonroad Mobile	1.49	0.04
Emissions Standards for Diesel-Powered Non-Road Utility Engines of 50 or More Horsepower	Nonroad Mobile	0.39	3.28
Emissions Standards for Spark Ignition Marine Engine	Nonroad Mobile	1.42	0
Emissions Standards for Large Spark Ignition Engines	Nonroad Mobile	0.54	0.96
Portable Fuel Containers Phase 1 and 2 Rules	Area	4.62	0
<b>TOTAL REDUCTIONS</b>		<b>8.46</b>	<b>6.05</b>

The reductions from the Tier 2 motor vehicle emission standards occurred between 2009 and 2010. The reductions from the other identified measures occurred between 2009 and 2011. The 3 States have implemented the contingency reductions from the on-road mobile sources through establishment of a 2010 MVEB for NO<sub>x</sub>. Even though additional reductions in VOC emissions from on-road mobile sources may have occurred between 2009 and 2010, the States have elected not to count these towards the contingency requirement. Thus, the 2010 NO<sub>x</sub> MVEB reflects only a reduction in NO<sub>x</sub> emissions. EPA believes that all of these measures achieve additional reductions beyond those needed to offset growth in activity levels as new motor vehicles, nonroad vehicle and locomotive engines, or portable fuel containers replace older items which either were subject to less stringent emissions standards or no emission standards regulations.

## **VII. Transportation Conformity Budgets**

Transportation conformity is required by CAA section 176(c). EPA's conformity rule requires that transportation plans, programs and projects conform to state air quality implementation plans and establishes the criteria and procedure for determining whether or not they do.

Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of a national ambient air quality standard such as the 1997 ozone NAAQS. The criteria by which EPA determines whether a SIP's MVEBs are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). The process for determining the adequacy of submitted SIP budgets is described in 40 CFR 93.118(f).

For an attainment demonstration states must establish VOC and NO<sub>x</sub> MVEBs for the attainment year and submit these MVEBs to EPA for approval. Upon adequacy determination or approval by EPA, states must conduct transportation conformity analysis for their Transportation Improvement Programs (TIPs) and long range transportation plans to ensure highway vehicle emissions will not exceed applicable MVEBs. Failure to demonstrate such transportation conformity results in freezing of Federal highway funds and all Federal highway projects in the lapsed area. The States discuss transportation conformity in Section 8.0 of the June 2007 SIP revisions. The States describe their methods and provide detailed input parameters used in modeling the inventories in Appendices E1 and E2 of the June 2007 SIP revisions. In the Washington Area, the Metropolitan Washington Air Quality Committee (MWAQC) consulted with the Transportation Planning Board (TPB) to establish mobile source emissions budgets. In addition to the 2009 MVEBs required for the attainment year, the 3 States have implemented the NO<sub>x</sub> contingency reductions from on-road mobile sources by establishing a 2010 MVEB for NO<sub>x</sub>.

The Washington Area MVEBs for the attainment demonstration and contingency measures are based on projected 2009 and 2010 mobile source emissions, accounting for all mobile control measures and transportation control measures. As discussed in section II. C herein, EPA has already determined these MVEBs are adequate. *See* 78 FR 9044. The MVEBs for the 2009 attainment demonstration and the 2010 contingency plan NO<sub>x</sub> MVEBs are shown in Table 4.

<b>Table 4. The Washington Area MVEBs for the 2009 Attainment Plan and 2010 Contingency Plan</b>			
Budget Type	Budget Year	MVEBs	
		VOC (tons per day)	NOx (tons per day)
Attainment Demonstration	2009	66.5	146.1
Contingency Plan	2010	N/A	144.3

### **VIII. Proposed Action**

EPA is proposing to approve the 1997 ozone NAAQS attainment demonstration, included in the 3 States' June 2007 SIP revisions, as demonstrating attainment for the Washington Area by the applicable attainment date of June 15, 2010. On February 28, 2012 (77 FR 11739), EPA determined that the Washington Area attained the 1997 ozone NAAQS by its attainment date. EPA is also proposing to approve the contingency measures plan from the June 2007 SIP revisions and the MVEBs associated with the attainment demonstration and contingency measures. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

### **IX. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those

imposed by state law. For that reason, this proposed action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, pertaining to the 1997 8-hour ozone attainment demonstration, contingency measures and MVEBs for the Washington Area submitted by the State of Maryland, the District of Columbia and the Commonwealth of Virginia on June 4, 2007, June 12, 2007 and June 12, 2007 respectively, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the states, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 et seq.

Dated: March 13, 2013.

W. C. Early,  
Acting Regional Administrator,  
Region III.

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